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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Kestutis Patiejunas

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EXAMINER

OSMAN, RAMY M

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/608,191	Applicant(s) PATIEJUNAS, KESTUTIS	
	Examiner RAMY M. OSMAN	Art Unit 2457	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 7-12, 18-21 and 25-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7-12, 18-21 and 25-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

1. This action is responsive to RCE amendment filed on 2/5/09, where Applicant presented amended claims 1,18,27 and canceled claim 24, on 12/19/08. Claims 1-4,7-12,18-21,25-27 are pending.

Response to Arguments

2. Applicant's arguments, filed 2/5/09, with respect to the rejection(s) of claim(s) 1-4,7-12,18-21,25-27 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Bolik et al (US Patent No 6857053).

Claim Objections

3. Claim 18 (and it dependents) objected to because of the following informalities: The preamble of 18 recites "One or more... media", while the dependent claims recite "The media". This language is inconsistent. Appropriate correction is required.

Claim Rejections - 35 USC § 101

4. Claim(s) 1-4,7-12 are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. While the claims recite a series of steps or acts to be performed, a statutory "process/method" under 35 U.S.C. 101 must (1) be tied to particular machine, or (2) transform underlying subject matter (such as an article or material) to a different

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state or thing. See page 10 of In Re Bilski 88 USPQ2d 1385. The instant method claims are neither positively tied to a particular machine or hardware element that accomplishes the claimed method steps, nor do the claims perform transformation of underlying subject matter into a different state or thing. Since neither of these requirements are met, the method claims are not a patent eligible process under 35 USC 101 and are deemed as non-statutory subject matter.

(MPEP Section 2106.IV.B and 2106.IV.C)

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 27 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The limitation "receiving an acknowledgement ... window size remaining..." is unclear. It is not clear what the window size is referring or relates to. It is also unclear how the acknowledgment is received from the data source or how the data source can have a size at a destination. The limitation appears incomplete. This further renders the limitation "the window size included in the..." to also be unclear.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 7,10,12,18 & 24 rejected under 35 U.S.C. 103(a) as being unpatentable over Bolik et al (US Patent No 6857053).

9. In reference to claim 1, Bolik teaches a method for initiating the transmission of data, comprising:

establishing a connection from at least one data source to a destination (column 3 lines 14-20);

generating sessions to transmit data via the connection from the at least one data source to the destination (column 3 lines 25-35, Bolik discloses backup operations between client/server/storage which are essentially backup sessions), wherein generating the sessions comprises invoking an application programming interface and receiving a session acceptance from the destination via the application programming interface (column 3 lines 25-35 and column 4 lines 53-56, Bolik discloses use of programs on client/server for implementing the invention. Use of APIs are old and well known in the art of operating system services. It is obvious to use them in order to support the building of applications);

queuing a set of messages from the sessions for transmission over the connection to the destination from the data source (column 6 lines 3-15 & 31-34);

combining messages from at least two separate sessions for the destination having different data sources to generate a combined message stream (column 5 lines 65-67, Bolik discloses more than one client contributing to a group); and.

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transmitting messages from the queued set of messages and the combined messages based upon completion information associated with the queued set of messages stored in a queue at a dispatcher (column 6 lines 25-37).

10. In reference to claim 7, Bolik teaches a method according to claim 1, wherein the step of queuing a set of messages comprises a step of queuing the set of messages in at least one input/output buffer (column 6 lines 3-35).

11. In reference to claim 10, Bolik teaches a method according to claim 1, wherein the step of transmitting comprises a step of asynchronously transmitting messages from the queued set of messages (column 3 lines 13-45).

12. In reference to claim 12, Bolik teaches a method according to claim 1, wherein the step of transmitting comprises a step of transmitting via a transport layer (column 3 lines 12-25).

13. In reference to claim 18 this claim correspond to the method claims of claim 1 and is rejected based upon the same rationale as given for claim 1.

14. In reference to claim 27 this claim correspond to the method claims of claim 1 and is rejected based upon the same rationale as given for claim 1. Furthermore, the acknowledgement is interpreted as corresponding to the object/group IDs mentioned in columns 5-6.

15. **Claims 2-4,11,19-21 & 26 rejected under 35 U.S.C. 103(a) as being unpatentable over Bolik et al (US Patent No 7,305,486) in view of Gilman et al (US Patent Publication No 2003/0079121).**

16. In reference to claim 2, Bolik teaches a method according to claim 1. Bolik fails to explicitly teach wherein the step of establishing a connection comprises a step of establishing a

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connection in a pipe. However, Gilman teaches secure end-to-end communication in a network by utilizing one of a variety tunneling protocols (i.e. pipe) which provide advanced security features for communication (Gilman, ¶s 29 & 30). It would have been obvious for one of ordinary skill in the art to modify Bolik wherein the step of establishing a connection comprises a step of establishing a connection in a pipe as per the teachings of Gilman for the purpose of providing advanced security features in end-to-end communications.

17. In reference to claim 3, Bolik teaches a method according to claim 1. Bolik fails to explicitly teach wherein the step of establishing a connection comprises a step of authenticating at least one of the at least one source and the destination. However, Gilman teaches dual authentication utilizing a secure VPN communication link between computers for guaranteeing non-tampering of transmitted data (Gilman, ¶ 26). It would have been obvious for one of ordinary skill in the art to modify Bolik wherein the step of establishing a connection comprises a step of authenticating at least one of the at least one source and the destination as per the teachings of Gilman for the purpose of creating a secure communication link between computers and for guaranteeing non-tampering of transmitted data.

18. In reference to claim 4, Bolik teaches a method according to claim 3, wherein the step of authenticating comprises a step of authenticating both the at least one source and the destination (Gilman, ¶ 26, see rationale for claim 3).

19. In reference to claim 11, Bolik teaches a method according to claim 1, wherein the step of transmitting comprises a step of transmitting encrypted messages from the queued set of messages. However, Gilman teaches encryption utilizing a secure VPN communication link between computers for guaranteeing non-tampering of transmitted data (Gilman, ¶ 26). It would

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have been obvious for one of ordinary skill in the art to modify Bolik wherein the step of transmitting comprises a step of transmitting encrypted messages from the queued set of messages as per the teachings of Gilman for the purpose of creating a secure communication link between computers and for guaranteeing non-tampering of transmitted data.

20. In reference to claims 19-21 & 26, these claims correspond to the method claims of claims 2-4 & 11 respectively. Therefore, claims 19-21 & 26 are rejected based upon the same rationale as given for claims 2-4 & 11 above.

21. Claims 8,9,25 rejected under 35 U.S.C. 103(a) as being unpatentable over Bolik et al (US Patent No 7,305,486) in view of Lucovsky et al (US Patent No 6223207).

22. In reference to claim 8, Bolik teaches a method according to claim 1. Bolik fails to explicitly teach wherein the message completion information comprises results from a completion port operation of at least one of sending or receiving. However, Lucovsky teaches a completion port utilized for reporting the I/O completion status of a send/receive queue (Lucovsky, column 9 lines 42-51). It would have been obvious for one of ordinary skill in the art to modify Bolik wherein the message completion information comprises results from a completion port operation of at least one of sending or receiving as per the teachings of Lucovsky for the purpose of reporting the I/O completion status of a send/receive queue.

23. In reference to claim 9, Bolik teaches a method according to claim 8, further comprising a step of throttling message traffic in the at least one input/output buffer when the completion port is in a full state (Bolik, column 14 lines 1-5 and column 15 lines 7-21).

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24. In reference to claim 25, this claim corresponds to the method claim of claim 8.

Therefore, claim 25 is rejected based upon the same rationale as given for claim 8 above.

Conclusion

25. The above rejections are based upon the broadest reasonable interpretation of the claims. Applicant is advised that the specified citations of the relied upon prior art, in the above rejections, are only representative of the teachings of the prior art, and that any other supportive sections within the entirety of the reference (including any figures, incorporation by references, claims and/or priority documents) is implied as being applied to teach the scope of the claims.

26. Applicant may not introduce any new matter to the claims or to the specification. For any subsequent response that contains new/amended claims, Applicant is required to cite its corresponding support in the specification. **(See MPEP chapter 2163.03 section (I.) and chapter 2163.04 section (I.) and chapter 2163.06)**

27. In formulating a response/amendment, Applicant is encouraged to take into consideration the prior art made of record but not relied upon, as it is considered pertinent to applicant's disclosure. See attached Form 892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RAMY M. OSMAN whose telephone number is (571)272-4008.

The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ramy M Osman/
Primary Examiner, Art Unit 2457

April 24, 2009